

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
07-CR-212A

XU HANG WANG,
GREG SMILEY,
LING ZEN HU,
XIAO CHENG LIN,

Defendants.

This case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1), on September 21, 2007. The defendants filed numerous pretrial motions. On April 21, 2010, Magistrate Judge McCarthy filed a Report and Recommendation and Order: (1) denying defendants' non-dispositive motions for an audibility hearing, discovery, for a bill of particulars, severance, to strike surplusage and to change venue; and (2) recommending that defendant Smiley, Wang and Naim's motions to suppress evidence and statements be denied, and that defendant Hu's motions to dismiss the indictment and to suppress wiretap evidence be denied.¹ (See Dkt. No. 588).

¹ As to defendant Hu's motion to suppress evidence seized pursuant to a search warrant on September 13, 2007, the Magistrate Judge deferred ruling on that motion pending adoption or rejection of a separately-issued report and recommendation relating to whether that search warrant was obtained based upon information obtained in violation of the Fourth Amendment. In a separate Decision and Order, this Court is remanding that matter back to the Magistrate Judge for further

Defendants filed objections to the Report, Recommendation and Order (see Dkt. Nos. 597, 608, 609, 611, 614, 615), and the government filed a response thereto. Oral argument on the objections was held on June 25, 2010 and September 3, 2010.

With regard to the non-dispositive motions, pursuant to 28 U.S.C. § 636(b)(1)(A), the district court "may reconsider any pretrial matter under this [section] where it has been shown that the magistrate's order is clearly erroneous or contrary to law." Upon such review and after hearing argument from counsel, the Court finds that Magistrate Judge McCarthy's non-dispositive orders are neither clearly erroneous nor contrary to law. Accordingly, the defendants' objections to Magistrate Judge McCarthy's non-dispositive rulings are denied.

With regard to Magistrate Judge McCarthy's recommendations as to the dispositive motions, this Court must make a de novo determination of those portions of the Report, Recommendation and Order relating to the dispositive motions. Upon de novo review, and after reviewing the submissions and hearing argument from the counsel, the Court adopts the proposed findings of the Report, Recommendation, and Order. Accordingly, for the reasons stated by Magistrate Judge McCarthy, defendant Smiley, Wang and Naim's motions to suppress

proceedings. Accordingly, it is unnecessary to resolve the issue of Hu's motion relating to the September 13, 2007 search warrant at this juncture.

evidence and statements are denied, and defendant Hu's motions to dismiss the indictment and to suppress wiretap evidence are denied.²

The case is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: November 3, 2010

² As to defendant Hu's motion to suppress evidence seized pursuant to a search warrant on September 13, 2007, this Court defers ruling on that issue pending further resolution of defendant Hu's motion to suppress evidence seized from her apartment on September 12, 2007. Resolution of the motion to suppress evidence obtained pursuant to the search warrant hinges on whether that warrant was obtained in violation of Hu's Fourth Amendment rights. As the latter has not yet been determined, this Court will defer ruling on the former for now.